92-154

Supreme Court, U.S.
FILED
JUL 15 1992
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

In re:
Scientronic Corporation And
Eli Raitport
Petitioners

BELOW: (in CA 2nd Cir. 92-3010)
Scientronic Corporation
And Eli Raitport, Petitioners

BELOW: USDC EDNY, CV-91-1148 (RJD)
Scientronic Corporation And Eli Raitport,
Plaintiffs Against
AMERICAN TELEPHONE & TELEGRAPH and
subsidiaries, NYNEX Corp. and subsidiaries

USDC EDNY CV 91-3401 (RJD) Scientronic
Corporation, et al, Plaintiffs
Against
Department of Health and Human Services
("DHHS") and National Institute of Health;

USDC EDNY CV 91-4475 (RJD)
Scientronic Corporation, et al; Plaintiffs
against John Ring as President AMA; and
British Medical Association "BMA".

PETITION FOR A WRIT OF MANDAMUS
PURSUANT 28 USC 1651 TO THE JUDGES
Honorables William H. Timbers and Thomas
J. Meskill and George C. Pratt OF THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT.

Dated July 1992

Eli Raitport
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QUESTIONS PRESENTED.

QUESTION I.

Whether a Writ of mandamus should issue directly or through the Court of Appeals to compel the Clerk of the United States District court to correct distorted docket entries to reflect federal jurisdiction and other crucial matters before proceeding of the trial court begins?

QUESTION II.

Whether a Writ of Mandamus should issue directly or through the Court of Appeals to compel the United States district court to restore filed documents, but missing from the trial courts file, before the proceeding in the trial court starts?

QUESTION III.

Whether a Writ should issue directly or through the Court of Appeals to compel the trial court (USDC EDNY) to randomly select a judge and magistrate for each case, as provided by Local Rule 50.2?

QUESTION IV.

Whether a Writ of Mandamus should issue directly or through the Court of Appeals to compel the United States District Court to apply the procedure provided by 28 USCA Rule 16(b) FRCP to the cases at bar?

QUESTION V. Whether a Writ of Mandamus should issue to the judges of the Court of Appeals to compel application of the rule stated in IBM v. Edelstein, 526 F. 2d 37 (2nd Cir. 1975) to the case at bar, pursuant the clause of Equal Protection of Law?

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ORDERS BELOW.

The order of the Court of Appeals denying the Petition for a Writ to the United States District Court (E.D.N.Y.) has been filed on March 09, 1992, and is retyped on page 49 ; the denial of Petition for rehearing has been filed on May 22, 1992; and is retyped on page 50 ; the only memorandum-Order of the USDC filed on March 2, 1992, is on pages 51 et seq.

RELIEF NOT AVAILABLE FROM OTHER COURTS.

Relief cannot be had in any other court because this matter is subject to jurisdiction of this High Court only.

WRIT OF MANDAMUS IS WARRANTED AT BAR.

The questions presented herein is wholly outside the main issues; therefore it would not come before the court on appeal. The Court of Appeals 2nd Cir. extensively

labored on a question of preserving the file for appeal--to that extend the I and II questions at bar IN POINT with the case IBM v. Edelstein, 526 F.2d 37 (2nd Cir. 1975), 28 USCA Rule 5(e) n. 9 FRCP--and granted the sought relief. In Court below the Petitioners emphasized that ruling. Respondent did not and could not show a vestige of legal distinction justifying the granting of Writ of Mandamus in IBM v. Edelstein, supra, and denying it at bar.

THE CONSTITUTIONAL PROVISIONS as it concerns the five (5) Questions are as follow.

VII Amendment, United States Constitution, provides--

"In suit at common Law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

V Amendment United States Constitution, provides--

"No person shall .....
.....

nor be deprived of ..... property, without due process of law;"

XIV Amendment, United States Constitution
All persons born or neutralized in the United States, and subject to jurisdiction thereof, are citizens of the United States and state
.....
nor deny to any person within its jurisdiction the equal protection of the laws.

THE STATUTORY PROVIUSIONS.

28 USC §1651, Writs.
(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law.

18 USC §1512, which provides--
"(a) Whoever knowingly ..... or engages in misleading conduct toward another person, with intent to
.....
(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense
.....
shall be fined not more than $250,000 or imprisoned not more than 10 years, or both. As amended Pub. L. 97-291. §4(a) Oct. 12, 1982, 96 Stat. 1249"

Statutory definition of "misleading

conduct" is found as follow:

.....

"(3) the term 'misleading conduct' means--

.....

(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;"
18 USCA §1515(a) as amended Pub. L. 99-646 §50(b), Nov. 10, 1986."

18 USC 1961. Definitions
As used in this chapter--
(1) "racketeering activity" means (A) any act or threat involving .....,, bribery, ... which is chargeable under State Law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of Title 18, United States Code: Section 201 (relating to bribery), ...
.....
Section 1503 (relating to obstruction of justice), ...

18 USC §2071 provides--

.....

"(b) Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than three years, or both, and shall forfeit his office and be

disqualified from holding any office under the United States. (June 25, 1948, C. 645, 62 Stat. 795)

18 USC §2073 provides--
"Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of keeping accounts or records of any kind, with intent to deceive, mislead, injure, or defraud, makes in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties;
.....
shall be fined not more then $5,000 or imprisoned not more then 10 years, or both. (June 25, 1948, c. 645, 62 Stat. 795.)

FEDERAL RULES OF CIVIL PROCEDURE

28 USCA Rule 16(b) FRCP provides--

"The [scheduling] order shall issue as soon as practicable but in no event more than 120 days after filing the complaint." 1987 as amended.

In the Committee Notes has been stated: ". . . a scheduling order **must be issued** under Rule 16(b)."

Local Rule 50.2(b):

"(a) Time of assignment.
The clerk shall assign a civil case upon the filing of the initial pleading. . . .

.....

(b) Random Selection Procedure. All cases shall be randomly assigned by the clerk or his designee in public view in one of the clerk's offices in such a manner that each active judge shall receive as nearly as possible the same number of cases, except as provided in paragraph (h). Where a party or his counsel request prior to selection that he or she be present at the selection, the clerk shall make reasonable efforts to comply with the request. In Brooklyn civil cases a magistrate shall be drawn at the same time and in the same manner as a judge.

.....

(f) Objection.

Any objection by a party to designation of a judge or to place of trial shall be made by letter or motion to the judge assigned."

STATE STATUTES PROVISION

"175.40 Issuing a False Certificate. A person is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, he issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information. Issuing a false certificate is a class E felony. 175.40 Penal

Law.

STATEMENT OF THE FACTS.

1. On March 29, 1991, Petitioners filed a suit for infringement of Petitioners' patents for switches of keyboards used in telephones, etc., fraud and interference with Petitioners' business -- against AT&T and NYNEX Corporation.

2. On September 5, 1991, Petitioners filed a suit against Department of Health and Human Services ("DHHS") and National Institute of Health ("NIH") for tortuous handling and theft of confidential scientific material of bio-medical projects submitted by Petitioners in 1990 pursuant official and private solicitation by employees/ officers of DHHS.

3. On November 14, 1991 Petitioners filed a suit against American Medical Association ("AMA") and British Medical Association ("BMA") for tortuous refusal

to file a Petition with the Economic and Social Council of the **United Nations** to request to discuss interference in the United States with Petitioners' disclosure and manufacturing of means for curing AIDS and other cancers, **inter alia**, it developed. The interference is by way of stealing and plundering Petitioners' inventions; whereas access to an impartial tribunal and Due Process of Law, Petitioners are denied for twenty (20) years, for instance, as at bar.

4. It is clear that in the 1st case patent and antitrust laws and RICO Act laws are involved.

5. In the second case statutes and promulgated rules of DHHS for handling confidential information are involved. It is crystal clear that the second case have no connection to patent laws or antitrust laws; nor the facts could have a relationship.

6. The third case involves the laws of privi between Petitioners and AMA and BMA and their standing before the United Nations pursuant international law. It cannot be doubted that the Laws and facts of this case are far remote from the other two cases.

7. The 1st case initially was assigned by the clerk to judge Nickerson, and magistrate Caden, however soon thereafter, it was reassigned to judge Dearie and magistrate Carter, although the orders do not appear on the docket sheet.

8. Subsequent cases were assigned to judge Dearie and magistrate Carter. In each case Petitioners paid the fee and requested that the judge and magistrate to be selected in Petitioners' view pursuant promulgated local Rule 50.2(b).

9. On November 14, 1991, the assistant clerk stated to the the Petitioner that

all their cases are predisposed to be dismissed; and wherefore, all the cases have to assigned to judge Dearie; and added that she hates to see the Petitioners wasting the money.

FEDERAL OFFENSES IN THE CLERK's OFFICE

10. Subsequently, Petitioners noticed the following falsifications and voidance of documents in the files of the court of 91-CIV1148 and 91-CIV-3401 and in 91-CIV-4475, to wit:

(i). In case #91 CIV 1148, in place of "Demand" in docket sheet a falsity has been entered that no monetary controversy is complained off in the case;

(ii). ditto Plaintiffs' Response to Defendant AT&T, filed on 8/5/91, has not been docketed;

(iii). ditto Plaintiffs' Protest against Misconduct of the Magistrate and Motion to Remove the Case From Magistrate's

Calendar, has been docketed with a wrong date;

(iv). ditto 30 original documents, including the Complaint, filed in that case, are not found in the court's file,

(v). In case #91 CIV 3401, in place of "Demand" a falsity has been entered that no monetary controversy is complained of;

(vi). ditto the entry #6 has been distorted;

(vii). ditto in the entry #6 falsely a new Defendant has been named;

(viii). ditto a document titled Addendum to the Complaint, filed on 11/25/91, has been voided;

(ix). In case 91 CIV 4475, in place of "Demand", a falsity has been entered, that no monetary controversy is complained of.

PROCEDING IN DISTRICT COURT (EDNY)

11. Petitioners attempted to resolve the matters, subject of the instant Petition at the level of the District court. On Dec. 16, 1991, they have sent a letter to the Clerk of the court with copies to the chief judge and judge Dearie. Then on December 26, 1991, Petitioners send by certified mail a Petition for a Writ of Mandamus to the clerk of Judge Dearie, and a Motion To File Documents by certified mail RRR with Judges chambers, Rule 5(e) FRCP with identification on each page, for assuring that the Judge Dearie receives it.

12. On January 14, 1992, at pre-motion conference at the initiative of AMA and BMA and DHHS, Petitioners brought up the subject of the Motion and Request for a Writ to the court's clerk.

13. Judge Dearie stated from the bench that if and when the Complaints will survive Motions to Dismiss, then he will

see whether the docket and files should be corrected; and if yes, the court will direct accordingly. The Motion to file documents pursuant Rule 5(e) FRCP, the judge denied from the bench.

14. On January 14, 1992, judge Dearie acknowledge that he is closely related to the Law-firm representing AMA and BMA--Defendants in the case 91-CV-4475, above.

15. It is elementary, the documents could not be filed **nunc pro tunc**, because they would not be before the District court at the time of deliberation upon the Motions to Dismiss.

16. In connection with scheduling a hearing on Motion to Dismiss, magistrate Caden took upon himself and directed to copy two (2) documents of the case #3401, above, for restoration into the court's file.

17. On January 15, 11.30 A.M. (the

time litigant are directed to call) Petitioners called the clerk of the Judge with a request to set a date for pre-motion conference, to move the Court to recuse itself from the three (3) Petitioners' cases. The clerk advised by way of a message that that may be handled by way of a letter.

18. On January 16, 1992, Petitioners called again the calendar clerk stating that in view of Court's announcement that it does not need the missing documents--whatever it may be in it--in order to decide the faith of the law suits, it constitute an utterance that the judge predisposed to handle Petitioners' law suits arbitrarily and capriciously. Wherefore, this matter, herein, cannot be handled passively by way of letters. More over, the judge impliedly admitted intention to obstruct justice on appeal, because the Court of Appeals will consider

nothing, but what it was before the District court at the time of deliberation; I.B.M. v. Edelstein, Supra. Further more, at bar are two (2) more procedural questions which are crucial.

19. Therefore, a motion should be filed, incorporating the three (3) questions, to wit: (1) recusal of the judge, (2) compliance with Due Process of Local Rule 50.2(b), and (3) restoration of the court's file and docket entries of Petitioners' three above said cases. It will give an opportunity Defendants to reply, and for the Judge to think over, perhaps he did not intend to say, what he did.

PROCEEDING
IN THE COURT OF APPEALS (2nd Cir.)

20. There was no message-reply, and Petitioners filed in Court of Appeals, 2nd Cir. a Petition for a Writ of Mandamus

to the judges of the USDC EDNY on January 30, 1992, pursuant 28 USC §1651 and pursuant the Rule promulgated by the Court in IBM v. Edelstein, 526 F.2d 37 (2nd Cir. 1975), 28 USCA Rule 5(e) n. 9 FRCP and United States v. Brennan 629 F.Supp. 283 (E.D.N.Y 1986), Affirmed 867 F.2d 111, Certiorari denied 109 S.Ct 1750, 104 L.Ed 2d 187, requesting to direct the Judges of the USDC EDNY to:

(1) select a judge for each of Petitioners' cases pursuant local Rule 50.2(b); and

(2) correct distorted docket entries; and

(3) restore missing documents and missing entries in the court files, as follow below; and

(4) Set a scheduling Order pursuant Rule 16(b) FRCP for hearing Plaintiffs' Motion to take 12 Judicial Notices in case 91-CIV-1148, filed on 7/23, 1991;

(5)Set for Hearing Plaintiffs' Motion to take 4 additional Judicial Notices, in case 91-CIV-1148, filed 8/5/91;

(6) Set for hearing on Defendants' Motion to dismiss Complaint and Plaintiffs' Cross Motion for Judgment on the Pleadings filed on July 12 and 23, respectively, in case 91-CIV-1148, above;

(7) Set for hearing Plaintiffs' Protest of Magistrate's inaction and Motion to Remove the Case from Magistrate Carter's calendar, in case 91-CIV-1148, filed on 12/12/91;

(8)Set a pre-motion conference before filing a Motion to declare Defendants representative of a class in case 91-CIV-1148, requested from Magistrate Carter in June 1991;

21. There was no briefs in opposition filed by any of the Respondents.

22. On March 2 District judge Dearie issued an Order recusing himself, ordering

the clerk to reassign all three cases to one judge, and was silent insofar as correction of docket entries and missing documents from court's files.

23. On March 09 the Clerk of the District court reassigned the three above captioned cases to judge Johnson, ignoring the Due Process of Law.

24. Petitioners filed a Motion of objection pursuant Local Rule 50.2(f), since the cases were assigned to judge Johnson emphatically in defiance of Due Process. However, judge Johnson ignored the Motion and moved to proceed in the cases.

25. On March 17 the Court of Appeals denied the Petition for the Writ, without a memorandum.

26. On March 31 Petitioners filed a Petition for Rehearing with suggestion that the action should be reheard en Banc, because of "false certificate", pursuant

175,40 Penal Law of New York State, filed by judge Dearie, subsequent to docketing of above said Petition for the Writ.

Petitioners meticoυosly described the Racketeer Influenced and Corrupt Organization, within the meaning of 18 USC 1961 et seq., enterprise operating in the courts of the United States for at least the last 25 years; therefore urging granting of the Writ.

27. There were no briefs in opposition to the Petition for Rehearing, neither.

28. On May 22, 1922, the Court of Appeals for the 2nd Cir. denied the Petition for Rehearing, without opinion; p. and the instant Petition follows.

ARGUMENT.
JURISDICTION OF THIS HIGH COURT.

This Honorable High Court held--

> "Mandamus will issue to a circuit court of appeals to require it to decide an appeal from an order of a district court, ... Harley-Davidson

Motor Co. v. Buffington, Pa. 1922, 42 S.Ct. 527, 259 U.S. 414, 66 L.Ed. 996;" 28 USCA 1651, n.188.

"Mandamus lies to enforce the right to appeal. In re Jordan, N.Y. 1877, 94 U.S. 248, 4 Otto. 248, 24 L.Ed. 123. See, also, In re Buder, Mo. 1926, 46 S.Ct. 557, 271 U.S. 461, 70 L. Ed. 1036; Ex parte South & N.A.R. Co., Ala 1877, 95 U.S. 221, 5 Otto. 221, 24 L.Ed. 355." 28 USCA §1651 n. 188.

At bar not only the appeal is in jeopardy, but the access to trial is foreclosed. Thus, the V Amendment and VII Amendment would be defeated.

It is elementary that unless the trial court has before it the Complaint and Motions made by litigants, a judicial inquiry does not take place. Therefore, the relief sought here is more fundamental, than in cited cases. The errors complained of are not errors involving improper exercise of discretion; see Stans and Mitchell v. Gagliardi, 485 F.2d 1290 (2d Cir. 1973); rather they concern with matters which are entirely outside the

permissible bounds of the trial court's and Appeals court's discretions, and which exceed the trial court's and appeals court's jurisdictions. Such actions are properly reviewable by writ of mandamus. See Parr v. United States, 351 U.S. 513, 520, 76 S.Ct. 912, 917, 100 L.Ed. 1377 (1956). Moreover, appellate review will be defeated if the writ does not issue. Restriction which may impede the development, presentation and determination of facts should be avoided wherever possible--particularly at the comparative outset of such a trial as here. Cohen v. Beneficial Industrial Loan Corp. 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949); Chabot v. National Securities and Research Corp. 290 F.2d 657 (2d Cir. 1961); MacAlister v. Guterma, 263 F.2d 65 (2d Cir. 1958)."

It has been said that --

"Mandamus is an extraordinary remedy

reserved for really extraordinary causes and exercisable then only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. Jones v. Gasch, 1967, 404 F.2d 1231, 131 U.S. App. DC 254, Cert. Denied 88 S.Ct. 1414, 390 U.S. 1029, 206 L.Ed. 286." 28 USCA 1651, n.92.

The Law in the United States has been apparently established--

"Although court will not issue writ of mandamus unless no other remedy is available, lack of remedy by appeal or some other fashion is a prerequisite to issuance of mandamus, not a factor to be weighed in determining whether or not, once it is shown that there is no other remedy, the writ should be issued. U.S. v. Denson, C.A. Tex. 1979, 603 F.2d 1143." 28 USCA 1651, n.98 U.S. v. Watson, 1979, 603 F.2d 192, 66 cc Pa 107; Carter v. Seamans, C.A. Tex. 1969, 411 F.2d 767; Wilmot v. Doyle, C.A. Alaska, 1968, 403 F.2d 811; 28 USCA §1651 n. 99.

"Guidelines to be used in deciding whether extraordinary relief of a writ of mandamus is appropriate to a particular case are as follow: (1) parties seeking their writ have no adequate means, such as a direct appeal, to attain relief he or she

> desired; (2) petitioners will be damaged or prejudiced in a way not correctable on appeal; (3) district court's order is clearly erroneous as matter of law; (4) the matter is off repeated error, or manifest a persistent disregard of the federal rules; and (5) court's order raises new and important problems, or issues of law of first impression. U.S. v. Greger, C.A. Nev. 1981, 657 F.2d 1109, Certiorari denied 103 S.Ct. 1891, 461 US 913, 77 L.Ed. 281. 28 USCA §1651, n. 92.

At bar, all 5 conditions are precisely fulfilled. (1) It is obvious, no other relief is available, because save this Writ is granted, there would be no record upon what lower court could indulge, and nothing would be available for this High Court to review; (2) Petitioners will be damaged--obvious; (3) lower courts' omissions are clearly erroneous; (4) the errors were repeated in the three case at bar, and -allegedly- in many more cases, over the last 20 years; (5) such extravagant obstruction of justice, as presented in this case, and RICO enterprise

in the United States courts are issues of first impression.

A case in point--International Business Machines Corp. v. Edelstein, Supra, on page 45, the court said;

> "Filing at the trial court level with a view to 'making a record' is crucial because, absent extraordinary circumstances, federal appellate courts will not consider rulings or evidence which are not part of the trial record. Wyndham Associates v. Bintliff, 398 F. 2d 614, 620 (2d Cir. 1968); Mahoney v. Federal Saving & Loan Ins. Corp., 393 F. 2d 156, 162 (7th Cir. 1968); Andrews v. Olin Mathieson Chemical Corp., 334 F. 2d 422, 425 (8th Cir. 1964). This is true whether the record is merely ambiguous or is affirmatively deficient with respect to any papers or orders of any kind. First National Bank of Arizona v. British Petroleum Co., 324 F.Supp. 1348, 1359 (S.D.N.Y. 1971); Mitchell v. Trade Winds Co., 289 F. 2d 278, 279 (5th Cir. 1981); Jones v. Snead, 431 F. 2d 1115, 1117 (8th Cir. 1970). Moreover, it is of no avail to an appellant that the trial court itself may have prevented him from including a particular item in the trial record; the appellate court will not speculate about the proceedings below, but will rely only upon the record actually made. Little v. Green, 428 F.2d 1061, 1070 (5th Cir. 1970) (Court of Appeals refused

to consider questions on appeal on grounds that it did not appear in trial record, where counsel claimed that trial judge prevented him from interposing an objection during trial.)" Supra, at p. 45.

Petitioners respectfully request the attention of the Honorable High Court that the situation at bar is by far more grave and obscure than the situation was in I.B.M. v. Edelstein, Supra. There, only, the appeal was in jeopardy; whereas at bar a trial inquiry cannot be had either. Thus, the V Amendment and the VII Amendment would be defeated.

THE CONCLUSION IS the jurisdiction of this High Court in this case is unquestionable.

ELABORATION ON THE QUESTIONS PRESENTED.

QUESTION I.

Whether a Writ should issue directly or through the Court of Appeals to compel the Clerk of the United States District court to correct distorted docket

entries to reflect federal jurisdiction and other crucial matters before proceeding of the trial court begins?

It is crystal clear the Court of Appeals stepped outside of its jurisdiction, denying the Writ, upon the First Question. In view that Public policy in Due Process and in the spirit of the letters proclaimed that distortion of the docket entry is a federal offense. The Statute 18 USC §2073 provides--

> "Whoever, being a ... clerk, ... of the United States or any of its agencies, charged with the duty of keeping ... records of any kind, with intent to deceive, mislead, injure, or defraud, makes in any such ... record any false or fictitious entry ... of any matter relating to or connected with his duties;
> .....
> shall be fined not more then $5,000 or imprisoned not more then 10 years, or both. (June 25, 1948, c. 645, 62 Stat. 795.)

Hence, distorting the docket entry is a felony cognizant by Public Policy. However, denying the Writ, supra, the three judges of the court of Appeals,

induced to believe that distorting the docket entry is not a federal offense. Thus, the said judges of the court of Appeals have defeated the V Amendment of the Constitution of United States and transgressed the statute 18 USC §1512, which provides--

> "(a) Whoever knowingly ..... or engages in misleading conduct toward another person, with intent to
> .....
> (3) hinder, delay, or prevent the communication to ... or judge of the United States of information relating to the commission .... of a Federal offense
> .....
> shall be fined not more than $250,000 or imprisoned not more than 10 years, or both. As amended Pub. L. 97-291. §4(a) Oct. 12, 1982, 96 Stat. 1249"

Statutory definition of "misleading conduct" is found as follow:

> "(3) the term 'misleading conduct' means--
> .....
> (B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;"

18 USCA §1515(a) as amended Pub. L. 99-646 §50(b), Nov. 10, 1986."

The judges, above, omitted or concealed that they did not had jurisdiction to annul the Statute 18 USCA 2073, or they did not have jurisdiction to annul the statute, supra, without deliberation. Thus, the statute 18 USCA 2073 is good. Whereas, the judges transgressed the V Amendment and the statutes, Supra. Wherefore, Mandamus should issue.

Hence, it is conclusive that upon the First Question the Court of Appeals stepped outside its jurisdiction.

QUESTION II.

Whether a Writ of Mandamus should issue directly or through the Court of Appeals to compel the United States district court to restore filed documents, but missing from the trial courts file, before the proceeding in the trial court starts?

It is crystal clear the Court of Appeals stepped outside of its jurisdiction, denying the Writ, upon the Second Question in view that Public policy made in Due Process, and which in the spirit of the letters proclaimed that concealing or removing, or destroying records, documents from the courts' files is a federal offense.

The Statute 18 USC §2071 provides--

> .....
> "(b) Whoever, having the custody of any ..... document, paper, ... willfully and unlawfully conceals, ...falsifies, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than three years, or both, and shall forfeit his office and be disqualified from holding any office under the United States. (June 25, 1948, C. 645, 62 Stat. 795)

Hence, concealing or destroying documents from court's file is a Federal offense. Then, if they were accidentally, as to oppose to willfully, destroyed, the district court would have forthwith order to replace them. Since, the district court refused to restore the documents, the Court of Appeals should have granted the writ of mandamus. However, denying the Writ, supra, the three judges of the court of Appeals, induced to believe that destroying the documents from court's file is not a federal offense. Thus, the said judges of the court of Appeals have transgressed the statute 18 USC §1512, which provides--

> "(a) Whoever knowingly ..... or engages in misleading conduct toward another person, with intent to
> .....
> (3) hinder, delay, or prevent the communication to a ..... judge of the United States of information relating to the commission or possible commission of a Federal offense
> .....

shall be fined not more than $250,000 or imprisoned not more than 10 years, or both. As amended Pub. L. 97-291, §4(a) Oct. 12, 1982, 96 Stat. 1249"

Statutory definition of "misleading conduct" is found as follow:

"(3) the term 'misleading conduct' means--

.....

(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;"
18 USCA §1515(a) as amended Pub. L. 99-646 §50(b), Nov. 10, 1986."

The judges, above, omitted or concealed that they did not had jurisdiction to annul the Statute 18 USCA 2071, or they did not have jurisdiction to annul the statute, supra, without deliberation. However, the judges created an impression that destroying court' files is not a Federal offense. Hence, the judges committed a felony, and Mandamus should issue. Otherwise, the V Amendment would be defeated.

Hence, it is conclusive that upon the SECOND Question the Court of Appeals stepped outside its jurisdiction.

QUESTION III.

Whether a Writ should issue directly or through the Court of Appeals to compel the trial court (USDC EDNY) to randomly select a judge and magistrate for each case, as provided by Local Rule 50.2?

Local Rule 50.2(b) provides--

.....

(b) Random Selection Procedure. All cases shall be randomly assigned by the clerk or his designee in public view in one of the clerk's offices in such a manner that each active judge shall receive as nearly as possible the same number of cases, except as provided in paragraph (h). Where a party or his counsel request prior to selection that he or she be present at the selection, the clerk shall make reasonable efforts to comply with the request. In Brooklyn civil cases a magistrate shall be drawn at the same time and in the same manner as a judge."

Thus, the Local Rule 50.2, in the spirit of the letters granted to Plaintiff a Right or privilege of random selection

of judges and magistrates, to assure as much as possible an independent and impartial tribunal. Notwithstanding, the preamble of the Local Rules which specifies that the rules are adopted for internal use and do not vest any rights in litigants, Rule 50.2(b) is **ipso-facto an exception.** Since internal management cannot be affected whether plaintiffs' request for witnessing the selection of the judge is honored or not. Consequently, the rule, Supra, in its whole substance creates a privilege for the plaintiffs, "provided or administered by the United States."

Therefore, it is superfluous to argue that the judges of the court of Appeals stepped outside their jurisdiction. Since they have denied Petitioners the Right or privilege of random selection of trial judges and magistrates, they have transgressed 18 USC 245.

Then, the judges induced to believe that deprivation of a privilege is not a Federal offense, they have transgressed 18 USC 1512.

The statute 18 USC §245 in the spirit of the letters provides--

> .....
> (b) Whoever, whether or not acting under color of law, by force ..... willfully ..... or interferes with, ...
> (1) any person because he or she has been, ...
> (B) ... enjoying any benefit, ...
> provided or administrated by the United States;
> .....
> shall be fined not more than $1,000 or imprisoned not more than one year, or both;

(It is elementary that in legal sense the clerk of the district court used force, since the process of selection the judge is 100% under physical control of the Clerk; whereas, Plaintiffs' protest cannot be effective.)

Denying the Writ, thereby inducing to believe that it is not a Federal offense,

the judges of the court of Appeals committed of a felony pursuant 18 USC §1512 which provides

> "(a) Whoever knowingly ..... engages in misleading conduct toward another person, with intent to
> .....
> (3) hinder, delay, or prevent the communication to a ..... judge of the United States of information relating to the commission or possible commission of a Federal offense
> .....
> shall be fined not more than $250,000 or imprisoned not more than 10 years, or both. As amended Pub. L. 97-291. §4(a) Oct. 12, 1982, 96 Stat. 1249"

Statutory definition of "misleading conduct" is found as follow:

> "(3) the term 'misleading conduct' means--
> .....
> (B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;"
> 18 USCA §1515(a) as amended Pub. L. 99-646 §50(b), Nov. 10, 1986."

The judges, above, omitted or concealed that they did not had jurisdiction neither

to annul the Statute 18 USCA 245, nor they did have jurisdiction to annul the Rule, supra, without deliberation upon it.

Hence, it is conclusive that upon the THIRD Question the Court of Appeals stepped outside its jurisdiction: transgressed the V Amendment and 18 USC 245 and 18 USC 1512. Wherefore, A Writ should issue.

QUESTION IV.

Whether a Writ of Mandamus should issue directly or through the Court of Appeals to compel the District Court to apply the procedure provided by 28 USCA Rule 16(b) FRCP to the case at bar?

Rule 16(b) FRCP is designed to prevent delay of justice. It provides--

> "The [scheduling] order shall issue as soon as practicable but in no event more than 120 days after filing the complaint." 1987 as amended In the Committee Notes has been stated: ". . . a scheduling order **must be issued** under Rule 16(b)."

Hence, Plaintiffs' Right is indisputable. Adams v. Nagle, Pa 1938, 58 S. Ct. 687,

303 US. 532, 82 L.Ed. 999; U.S. ex rel. Girard Trust Co. v. Helvering, App. D.C. 1937, 57 S. Ct. 855, 301 US 540, 81 L.Ed. 1272." 28 USCA 1651 n.115.

It is crystal clear that the judges of the Court of Appeal stepped outside their jurisdiction denying the Petitioners the benefit of Rule 16(b), supra, in view that Public Policy has uttered that denial of right or privilege is a Federal offense, and under the circumstances the judges transgressed the V Amendment and Statutes 18 USC 245 and 18 USC 1512 as stated above in QUESTION III, on pages 35--38, above incorporated herein as if it would be set forth full.

Hence, it is conclusive that upon the FOURTH Question the Court of Appeals stepped outside its jurisdiction.

QUESTION V.

Whether a Writ should issue to the judges of the Court of Appeals

to compel application of the rule stated in IBM v. Edelstein, 526 F. 2d 37 (2nd Cir. 1975) to the case at bar, pursuant the clause of Equal Protection of Law?

It cannot be any question whether the judges, above stepped out of their Constitutional power. In the spirit of the letters the XIV Amendment provides for equal application of law. However, the Court of Appeals, 2nd Circuit granted the writ upon identical question of filing documents, in case IBM v. Edelstein, supra, while denied the Writ to this Petitioners.

Denying the right guaranteed by the Constitution is a transgression of Statute 18 USCA §245, as stated above in QUESTION III, p. 36, above, incorporated herein as if it would be set forth full.

Further, the judges induced to believe that denying Equal Application of Law is not a Federal Offense, thereby transgressing 18 USC 1512, as set forth

in QUESTION III, ps. 37--38, above, incorporated herein as if it would be set forth full.

Hence, it is conclusive that upon the FIFTH Question the Court of Appeals stepped outside its jurisdiction.

CONCLUSION

The three judges of the Court of Appeals, not simply stepped out of their jurisdiction, but each of them committed **at least** five (5) felonies, denying the subject writ.

At least for 25 years the judiciary of the United States is dominated by racketeers, within the meaning of 18 USC 1961 et Seq., which provides--

> **18 USC 1961. Definitions**
> As used in this chapter--
> (1) "racketeering activity" means (A) any act or threat involving .....,, bribery, ... which is chargeable under State Law and punishable by imprisonment for more than one year; (B) any act which

> is indictable under any of the following provisions of Title 18, United States Code: Section 201 (relating to bribery), ...
> .....
> Section 1503 (relating to obstruction of justice), ...

In previous years the judges-racketeers once having procured a judge-ship, they so much despised the People of the World that they did not care that their transgressions will become eternal proof of Racketeering, within the meaning of 18 USC 1961 et seq., in the Government of the United States. Thus, judge Walker did not care that his statement made in the case Eli Raitport v. Evershine, et al, 85 Civ.-5607 (JMW) S.D.N.Y.: "[n]either the parties nor the Court have been given any idea what this action is about." Juxtaposing this statement with the Complaint, there, United States Patents #3,609,266 and #3,749,354, and discovery, it shines clearly that judge Walker made a false certificate.

Assuming that the Federal law is not clear whether a falsity stated in a judge's order is a crime, then in such event the law of the forum would be applied. Thus, the New York Penal Law would be applicable, which provides:

> "175.40 Issuing a False Certificate. A person is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, he issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information. Issuing a false certificate is a class E felony. 175.40 Penal Law.

Hence, it is also a transgression of 18 USC 1961(1)(A), Supra.

Similar things took place in other cases where bribe was available to procure the services of a racketeer-judge. (Although, Petitioners never witnessed a judge accepting bribe, Petitioners are

convinced and assert that no one in its right mind would commit or acquiesce to a crime without a scienter. Hence, there is a scienter for some one in the Clerk's office to fail and distort entries, and void documents. There is a scienter for the judge to fail to mandamus the clerk to correct the dockets and file; and there is a scienter for the judge to make a false certificate. And there is a scienter for judges to abstain from issuing a Writ of mandamus when the lower court steps out of its jurisdiction, as at bar. Once, the commission of the crime is proven, the bribe may be inferred; United States v. Brennan, 629 F.Supp. 283 (E.D.N.Y. 1986), Affirmed 867 F.2d 111, Certiorari denied 109 S.Ct 1750, 104 L. Ed 2d 187.)

Recently, it became apparent that felonious acts of United States Federal and States' judges and justices interferes with the economy, not only of the United

States but of the World community, as well. Consequently, the courts became more "sophisticated", they are destroying the records and the files, altering the docket entries as the case at bar. Thus, **Due Process** is destroyed. In other words, the court indulges in destroying the evidence of their wrongdoing.

The arm caused to the people at large from the Racketeering enterprises in the United States district courts for the S.D.N.Y. and E.D.N.Y. is by far greater than the injuries inflicted by all shark loans of the entire United States combined.

The racketeering enterprise in the United States courts destroyed the innovative industry--in the United States and in the World. This subject Petitioners, herein, reiterated to this Honorable, High Court many times in the past. In 1982, The Congress has echoed that small technological business are the principal

source of innovations badly needed for well being of the National economy; 15 USCA 638(a), 1982.

Even products which has been developed long ago, are being withheld from the marketplace. Literally millions of new jobs would have been created. **Inter alia**, Scientronic Corporation is withholding manufacturing of:

(1) means and methods to cure cancers and AIDS;

(2) means and methods to convert nuclear waste into electricity;

(3) means and methods for economical acceleration of decay for hazardous waste.

The economy cannot be stimulated by propaganda alone. It must have new exciting products which are creating "an urge to buy." Then, the segment of population which has money is purchasing the new products, by virtue of compulsion; thereby creating new jobs. The newly employed,

then acquire purchasing power for expenditure on traditional items, such as houses, automobiles and appliances, as well.

It follows from all above said that the judiciary in the United States has pulled the "plug of the life machine" of the World, figuratively speeking. The judiciary has been converted into a mockery, since the clerk of the district court may destroy and/or distort documents filed, the district judge may close his eyes and not to see claims and evidence, the court of Appeals considers only what the bribed judge wanted to see, then the judiciary is only an instrument of deception to deceive the public and to make a show for the world.

I.B.M. may have a recourse through a writ of mandamus, just to preserve their documents for possible appeal; but these Petitioners have no recourse, although

no legal distinction between I.B.M. and these Petitioners can be made.

Petitioners petitioned for a writ to protect them by way of mandamus from being victims of the racketeering enterprise of the district court of the E.D.N.Y. Thus, to be afforded Due Process, nothing more. The Court of Appeals denied the Petition, and denied the request for rehearing EN BANC, notwithstanding that Petitioners proffered unrefutable argument supported by documentary evidence that indeed a Racketeering Influenced and Corrupt Organization and Conspiracy is operating in the United States district court threatening the society as a whole.

This Petition is an absolute Right. WHEREFORE, REPENT Honorable High Justices, REPENT and do justice.

Respectfully submitted

Eli Raitport

Eli Raitport, verified
for Petitioners
1580 41st Street
Brooklyn, N.Y. 11218
(718) 435-5027. Dated: July 5, 1992

I hereby undersigned Eli Raitport, under penalty of perjury certify that all facts stated in the foregoing Petition is true and correct to the best of my knowledge and belief.

Eli Raitport

Eli Raitport

AFFIRMED

Brooklyn NY.

7/12/92

MARVIN FRUCHTER
NOTARY PUBLIC, STATE OF NEW YORK
No. 01 FR 24 4729298
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES MARCH 30, 1993

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

EDNY
91-CV-1148
Dearie

IN RE:
Scientronic Corporation
and Eli Raitport
Petitioners

Docket Number: 92-3010

(Stamp of CA 2nd Cir.)

A petiton for a writ of mandamus and/or prohibition together with a motion for stay having been filed,

Upon consideration thereof, it is

Oredered that said petition be and it hereby is DENIED.

Dated: March 17, 1992

S/--
William H. Timbers, U.S.C.J

S/
Thomas J. Meskill, U.S.C.J.

S/
George C. Pratt, U.S.C.J.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 22nd day of May one thousand nine hundred and ninety-two.

In Re: ELI RAITPORT,
Petitioner,

SCIENTRONIC CORPORATION and
ELI RAITPORT
Plaintiff,

v.
AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
and NYNEX CORPORATION.
Defendants

(Seal of U.S.C.A 2nd Cir.)

Docket NUMBER: 92-3010

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by Petitioner, pro se

ELI RAITPORT

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereof.

S/
ELAINE B. GOLDSMITH,
Clerk

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK.

----------X

Scientronic Corporation and
Eli Raitport

Plaintiffs

CV-91-1148 (RJD)

-against-

A T & T, INC. and NYNEX Corporation,
Defendants.

----------X

----------X

Scientronic Corporation and Eli
Raitport

Plaintiffs

CV 91-3401 (RJD)

Against

Department of Health and Human
Services and The National Health
Institutes,

Defendants

----------x

----------x

Scientronic Corporation and Eli
Raitport,

Plaintiffs

CIV-91-4475 (RJD)

-against-

John J. Ring, M.D. President of
the American Medical Association
and President BRITISH MEDICAL
ASSOCIATION,

Defendants.

----------x

DEARIE, District Judge.

Prolific litigant Eli Raitport and his corporate alter ego, Scientronic Corporation, have sought sanctuary in this

Court in the wake of recent orders issued issued by the United States District Court for the Southern District of New York. At this time, he is prosecuting three separate actions against a variety of Defendants. In one action, Scientronic Corp. v. Ring, No. CV 91-4475 (RJD), recently conferenced before this Court, the Defendants American Medical Association and British Medical Association are represented by the firm of Sidley & Austin. At the recent pre-motion conference, the Court advised plaintiff that a member of the firm of Sidley & Austin was related to the undersigned by marriage. The Court informed Mr. Raitport that it would consider a request that the court recuse itself from the action.

Mr. Raitport did not respond by formally requesting the Court's recusal from Scientronic v. Ring, supra. Rather, he greeted the Court's offer by

unsuccessfully trying to file a petition for a writ of mandamus in the Second Circuit' seeking, inter alia, the Court's recusal from all of above-captioned cases.

Ordinarily, I would simply step aside in the affected action to avoid any appearance of impropriety. However, Plaintiff's history before the courts[2] and a reading of each complaint as well as the proffered motions suggests that the likely course of litigation warrants that all actions be assigned to a single judge and magistrate.

Accordingly, I recuse myself from the captioned actions and request the Clerk of the Court to reassign the cases in accordance with instructions from the Reassignment Judge after consideration of the foregoing.

SO ORDERED.

Dated: Brooklyn, New York
March 2, 1992

S/

RAYMOND J. DEARIE
United States District Judge

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[1] The Clerk of the Court for the United States Court of Appeals for the Second Circuit declined to docket Mr. Raitport's petition because no order or opinion to which he objected existed.

[2] The Court draws particular attention to Mr. Raitport's January 27, 1992 correspondence with the Clerk of the Court of the Second Circuit, in which he can be understood to threaten to make the Clerk an "escape-goat" if she does not comply with his demands.